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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,  
8  
9 Plaintiff-Respondent,  
10  
11 v.  
12  
13 RAFAEL VILLA-RICO,  
14  
15 Defendant-Petitioner.

NO: 2:14-CR-0001-TOR-1

ORDER DENYING MOTION TO  
VACATE, SET ASIDE, OR CORRECT  
SENTENCE UNDER 28 U.S.C. § 2255

16  
17 BEFORE THE COURT are Defendant's Motion to Vacate, Set Aside, or  
18 Correct Sentence under 28 U.S.C. 2255 (ECF No. 338), Application to Proceed In  
19 Forma Pauperis (ECF No. 339), Motion to Appoint Counsel, etc. (ECF No. 340),  
20 and Motion for Discovery, etc. (ECF No. 341). Defendant is proceeding *pro se*.  
The Court has reviewed the record and files herein, and is fully informed. For the  
reasons discussed below, the Court denies Defendant's Motions.

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ORDER DENYING MOTION TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE UNDER 28 U.S.C. § 2255 ~ 1

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Defendant waived his right to appeal (ECF No. 152 at ¶ 18) and no direct appeal was filed.

On May 7, 2017, Defendant filed the instant motions.

### A. Motion to Vacate, Set Aside or Correct Sentence

Here, Defendant is plainly not entitled to relief. A prisoner has one year to file a § 2255 motion, which time period runs from the latest of the following:

1 (1) the date on which the judgment of conviction becomes final;  
2 (2) the date on which the impediment to making a motion created by  
3 governmental action in violation of the Constitution or laws of the  
4 United States is removed, if the movant was prevented from making a  
5 motion by such governmental action;  
6 (3) the date on which the right asserted was initially recognized by the  
7 Supreme Court, if that right has been newly recognized by the  
8 Supreme Court and made retroactively applicable to cases on  
9 collateral review; or  
10 (4) the date on which the facts supporting the claim or claims  
11 presented could have been discovered through the exercise of due  
12 diligence.

13 28 U.S.C. § 2255(f). Here, because no appeal was filed, Defendant's conviction  
14 became final 14-days after Judgment was imposed. *See* Fed. R. App. P.  
15 4(b)(1)(A); *United States v. Gilbert*, 807 F.3d 1197, 1199 (9th Cir. 2015) ("if the  
16 movant does not pursue a direct appeal to the Court of Appeals, the conviction  
17 becomes final when the time for filing a direct appeal expires.").

18 Accordingly, Defendant's Judgment became final on November 21, 2014.  
19 He had one-year thereafter to file a timely § 2255 petition. Defendant did not file  
20 this petition until more than 18 months after this one-year period expired.  
Defendant has not demonstrated any conceivable exception which would toll the  
statute of limitations here. Thus, Defendant's petition must be dismissed as time  
barred.

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1       **B. Application to Proceed In Forma Pauperis, Motions to Appoint Counsel**  
2       **and for Discovery**

3           Without jurisdiction to proceed, Defendant’s remaining motions are moot  
4 and they will be denied.

5       **C. Certificate of Appealability**

6           A petitioner seeking post-conviction relief may appeal a district court's  
7 dismissal of the court’s final order in a proceeding under 28 U.S.C. § 2255 only  
8 after obtaining a certificate of appealability (“COA”) from a district or circuit  
9 judge. 28 U.S.C. § 2253(c)(1)(B). A COA may issue only where the applicant has  
10 made “a substantial showing of the denial of a constitutional right.” *See id.*  
11 § 2253(c)(2). To satisfy this standard, the applicant must “show that reasonable  
12 jurists could debate whether (or, for that matter, agree that) the petition should  
13 have been resolved in a different manner or that the issues presented were adequate  
14 to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S.  
15 322, 336 (2003) (internal quotation marks and citation omitted).

16           The Court concludes that Defendant is not entitled to a COA because he has  
17 not demonstrated that jurists of reason could disagree with this Court’s resolution  
18 or conclude the issue presented deserves encouragement to proceed further.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Defendant's Motion to Vacate, Set Aside, or Correct Sentence Under 28

3 U.S.C. § 2255 (ECF No. 338) is **DENIED**.

4 2. Defendant's Application to Proceed In Forma Pauperis (ECF No. 339) is

5 **DENIED** as moot.

6 3. Defendant's Motion to Appoint Counsel, etc. (ECF No. 340) is **DENIED** as

7 moot.

8 4. Defendant's Motion for Discovery, etc. (ECF No. 341) is **DENIED** as moot.

9 5. The Court further certifies that there is no basis upon which to issue a

10 certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

11 6. The District Court Executive is hereby directed to enter this Order and

12 furnish copies to the parties. This file and the corresponding civil file shall

13 be **CLOSED**.

14 **DATED** June 13, 2017.



17

A handwritten signature in blue ink that reads "Thomas O. Rice".

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19

20

THOMAS O. RICE

Chief United States District Judge